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November 30, 1998

Magalie Roman Salas
Secretary
Federal Communications Commission
TW-A325
445 Twelfth Street, S.W.
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: CC Docket Nos. 96-45 and 97-160

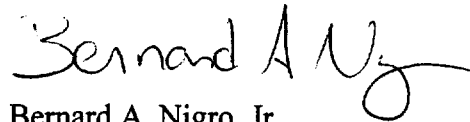
Dear Ms. Salas:

On behalf of GTE Service Corporation attached herewith is an original and fourteen copies of an Emergency Motion for Disclosure of Data and Information to Permit Public Review and Extension of Time filed pursuant to Section 1.41 of the Commission's rules. In an effort to file this motion in a timely manner, a facsimile of Frank J. Murphy's affidavit has been provided. Mr. Murphy's originally signed affidavit will be filed tomorrow under separate cover.

Kindly date-stamp the additional, marked copy of this cover letter and return it in the envelope provided.

Should you require any additional information, please contact the undersigned.

Sincerely,



Bernard A. Nigro, Jr.
Attorney for
GTE SERVICE CORPORATION

BAN:maj
Enclosures

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board)	CC Docket No. 96-45
on Universal Service)	
)	
Forward-Looking Mechanism)	CC Docket No. 97-160
for High Cost Support for)	
Non-Rural LEC's)	

**EMERGENCY MOTION OF GTE FOR DISCLOSURE
OF DATA AND INFORMATION TO PERMIT PUBLIC REVIEW
AND EXTENSION OF TIME**

GTE Service Corporation and its affiliated domestic operating companies (collectively "GTE"), pursuant to 47 CFR § 1.41, file this emergency motion for the disclosure of critical data and information pertaining to or constituting the cost model platform adopted by the Federal Communications Commission ("FCC" or "Commission") in the Fifth Report and Order ("Order").^{1/} In the absence of this information, GTE and other interested parties are deprived of the opportunity to review meaningfully the platform selected, and the data, methodology and inputs on which the Commission has relied or considered in making its determination. Failure to provide this information, and thereby shielding from public inspection critical components of the

^{1/} GTE submits this Emergency Motion without prejudice to its positions in the pending review of the Commission's Universal Service Order. *Texas Office of Public Utility Counsel v. FCC*, No. 97-60421 (5th Cir.)

cost model platform, would constitute an arbitrary and capricious exercise of the Commission's rulemaking authority and would thus invalidate the Order.

I. BACKGROUND

On November 18, 1998, the Order was published in the Federal Register. In the Order, the Commission adopted a synthesized platform for the cost proxy model that will be used to estimate non-rural carriers' forward-looking cost to provide universal service.^{2/} This platform purportedly contained the "best elements" of the three cost proxy models under consideration by the Commission. In adopting the synthesized model platform, the Commission noted that its selection was "based solely on our *evaluation* of its performance for determining non-rural carriers' forward-looking costs for universal service purposes."^{3/} However, the Commission also recognized that technical improvements or other changes may be necessary to ensure that the model platform "operates as described in this Order."^{4/}

GTE has analyzed and commented on the cost models and methodology being considered by the Commission since the inception of the above-referenced dockets.^{5/} GTE believes that the Model platform is inherently ill-suited to estimate accurately the

^{2/} The model platform consists of the "network design, engineering, and technology issues relevant to constructing a network to provide the supported services." (Order at ¶ 11). The FCC will select the cost model input values at a later date. (*Id.* at ¶ 92).

^{3/} Order at ¶ 12 (emphasis added).

^{4/} *Id.* at ¶ 13.

^{5/} See, e.g., GTE Oct. 17, 1997 Comments; GTE Oct. 27, 1997 Reply Comments; GTE Nov. 26, 1997 Comments; GTE Jun. 25, 1998 Comments; GTE Jul. 9, 1998 Reply Comments; GTE Aug. 28, 1998 Comments; GTE Sep. 11, 1998 Reply Comments.

costs of an efficient local exchange carrier to provide universal service. GTE's preliminary attempts to run the Model confirm this belief, and further suggest that the Model is not operating consistent with the findings and conclusions contained in the Order.

GTE seeks to analyze and evaluate the cost model platform selected by the Commission and the cost estimates produced. Despite the Commission's apparent belief to the contrary^{6/}, critical components of the Model platform and the inputs thereto have not been made available to the interested public and are therefore insusceptible to evaluation. In the absence of this data and information, GTE will be unable to analyze meaningfully the cost model platform and disabled from providing relevant comments on the methodology adopted and conclusions of the Order. Moreover, if this data is not immediately disclosed, GTE and the requesting public will be severely prejudiced should they desire to seek reconsideration of the Order.

II. THE COMMISSION MUST PROMPTLY MAKE ITS COST MODEL PLATFORM, METHODOLOGY, AND INPUTS AVAILABLE TO THE PUBLIC.

In this rulemaking proceeding, the Commission must promptly make available for comment and as part of the public record all data, studies and methodology underlying the conclusions expressed and the cost model platform adopted in the Order. It is well-settled law that "it is not consonant with the purpose of a rulemaking proceeding to promulgate rules on the basis of inadequate data or on data that, [in] critical degree is

^{6/} See Order at ¶ 92 ("The model components selected are all generally available to the parties, and a software interface to merge the selected components is also available on the Commission's World Wide Web site."). This Commission's belief in this respect is simply wrong. See Affidavit of Francis J. Murphy (attached).

known only to the agency."^{7/} Critical components of the cost model platform recently adopted by the Order have been shielded from public inspection. Indeed, the Commission has acknowledged that GTE and other parties opposed certain cost model methodologies considered (and now adopted) precisely because the data has not been made available for public inspection.^{8/} In an effort to facilitate and expedite the review and analysis of the undisclosed proprietary data, the Commission entered a Protective Order on July 27, 1998. Notwithstanding the existence of the Protective Order and the Commission's belief to the contrary,^{9/} the interested public remains in the dark.

It is arbitrary and capricious for the Commission to fail to consider all relevant factors by using "critical, yet unpublished, data to reach its conclusions"^{10/} The expeditious production of the data and information sought in this Emergency Motion is essential for GTE and other interested parties to provide meaningful and timely comment on the Commission's platform methodology and underlying conclusions.^{11/} Only in this way can the Commission take into account *all* relevant factors in selecting a

^{7/} *National Black Media Coalition v. F.C.C.*, 791 F.2d 1016, 1023 (2nd Cir. 1986), quoting *United States v. Nova Scotia Food Prods. Corp.*, 568 F.2d 240,251 (2nd Cir. 1977) (emphasis in original); see also *Portland Cement Ass'n v. Ruckelshaus*, 486 F.2d 375, 393 (D.C. Cir. 1973), *cert. denied*, 417 U.S. 921 (1974).

^{8/} See Order at n. 71, "At earlier stages of this proceeding, some commentary opposed using geocode data in the federal mechanism based on the assertion that the geocode data that presently exist for rural areas had not been made available for public review and may, therefore, be insufficient and unreliable."

^{9/} See Order at n. 72, "Pursuant to the Commission's Protective Order, PNR has recently made available the underlying geocode data for inspection by interested parties."

^{10/} *National Black Media Coalition*, 791 F.2d at 1024.

^{11/} Production of the requested data is also essential to permit meaningful participation during the upcoming inputs phase of this proceeding.

cost model platform. Even if disclosure were not already required by law (which it clearly is), the Commission's own *Universal Service Order* requires that the cost study or model and all underlying data, formulae, computations, and software associated with the model must be available to all interested parties for review and comment.^{12/} The FCC Model platform fails to comply with this criterion.

The Commission's regulations provide that a party may seek reconsideration of a Commission ruling within 30 days following the date of public notice of such action.^{13/} The Order was published in the Federal Register on November 18, 1998. If GTE and other interested parties are to be afforded the opportunity to seek reconsideration of the Commission's Order, the data and information requested herein must be promptly produced.

III. GTE's REQUESTS FOR DATA AND INFORMATION

In order to permit a meaningful review of the cost model platform and the data, methodology and inputs on which the Commission relied or considered in making its determination, GTE requests that the following data and information be made immediately available, but in no event later than seven calendar days from the submission of this Emergency Motion:

1. A complete and operational copy of the FCC's model platform (hereinafter referred to as the "Model") used to calculate universal service costs (as referred to in the Commission's Fifth Report and Order in CC Docket No. 96-45 and 97-160). This request seeks to obtain the same Model version and inputs that the FCC Staff is using. The Model should include the associated

^{12/} In the Matter of Federal-State Joint Board on Universal Service, *Report and Order*, CC Docket 96-45, 12 FCC Rcd. 8776, 8913-8916 at ¶ 250, Criterion 8 (1997) ("*Universal Service Order*").

^{13/} 47 C.F.R. § 1.429.

customer and input data necessary to run the Model for 50 states and the version of the HAI Model necessary to run the Model. This data includes, but is not limited to:

- a. All input files containing customer location information, assumptions, and associated terrain data, including all geocoding algorithms, databases and software used to develop the input files.
 - b. The FCC's input files containing values for user adjustable Model inputs.
 - c. The FCC's input files containing values for user adjustable HAI Model inputs.
 - d. All intermediate files (*i.e.*, output files produced by the FCC's run of the Model's clustering routine that are used as inputs to the Model's outside plant routine - such as the CLU, SAI, MG, HUL, COO, BIN, and DEN files).
2. The Model output reports pertaining to GTE for the twenty-eight states in which GTE operates using varied sets of inputs, including a list of the inputs used to produce said results.
 3. Spreadsheets, charts or any sensitivity analyses comparing the Model's results using varied sets of inputs provided in response to Request Number 2 above.
 4. For each Model run referred to in Requests Numbers 1-3, all worksheets and data files produced by the Model, including, but not limited to, the cluster.zip, distgrid, feedgrid, feedbywc and the HMWK files.
 5. All documentation relied on, created, authored, electronically produced, or otherwise used by the FCC or FCC Staff in the development of the Model.
 6. For each module (*e.g.*, cluster, distribution, and feeder) and the Model Interface, the algorithms and a detailed description of the formula used and the sequential flow of the algorithms within the Model.
 7. For each algorithm referred to in Request Number 6, all design and engineering guidelines or assumptions relied upon, or considered and not relied upon, as the basis of the methodology employed, and a detailed description of why each guideline or assumption was or was not relied upon.
 8. Any and all engineering guidelines relied upon, reviewed, or used by the FCC Staff, other developers, the FCC, or any consultants thereto, to develop the Model. This should include, but not be limited to, an identification of the

specific page and paragraph in the Model documentation that reflects a cite to a particular engineering guideline.

9. All engineering guidelines, manufacturers' specifications, and any other documents that support or tend to support the forward-looking design standard(s) for long loops (*i.e.*, loops in excess of 12 kilofeet) contained in the Model. This should include, but not be limited to, an identification of the document title, author and date of publication.
10. Any and all engineering guidelines, manufacturers' specifications, and any other documents concerning, referring, or relating to the testing requirements and procedures associated with the long loop arrangements referenced in Request Number 9. This should include, but not be limited to, an identification of the document title, specific page reference(s), author and date of publication.
11. Any and all engineering guidelines, manufacturers' specifications, and any other documents concerning, referring, or relating to the maintenance requirements and procedures associated with the long loop arrangements referred to in Request Number 9. This should include, but not be limited to, an identification of the document title, specific page reference(s), author and date of publication.
12. All documentation concerning, referring, or relating to the local loop transmission and design practices followed in the Model.
13. All documentation that supports or tends to support the position that the use of T1 technology on copper facilities is a forward-looking technology. This should include, but not be limited to, a list of all non-rural telephone companies that currently have an established practice to build new DLC utilizing new T1 on copper.
14. All documentation describing or explaining the interactions between the Model modules, input tables, module outputs, work sheets, etc. that the Model Interface is designed to automate and/or control.
15. A detailed description or explanation of what the Model's source code files and "*.csv" files contain and how they are used by the Model or should be used by the user.
16. A detailed description of any and all changes made to the Model between October 15, 1998 and the present.
17. All documents concerning, referring, or relating to the Model's design and development of costs for T1 on copper.

18. All documents concerning, referring, or relating to the Model's use of HDSL and the calculation of terminal equipment costs.
19. Identify whether the Model uses HDSL technology in the design and development of costs for T-1 technology. If HDSL is used, identify where the terminal equipment costs for each end are developed and contained in the Model. If HDSL is not used, identify where the T-1 repeater costs are developed and contained in the Model.
20. All documentation, calculations or data that support the use of the same annual charge factor for T1 and fiber DLC terminals.
21. An identification of how the remote provisioning and remote maintenance capabilities of fiber DLC is accounted for in the Model.
22. All documents, spreadsheets, charts, and other documents constituting or concerning a comparison of the Model results or outputs with the HAI Model, Benchmark Cost Proxy Model, or the HCPM.
23. The current default data source for customer locations referenced in Paragraph 8 of Appendix A to the Order.

IV. THE COMMISSION SHOULD EXTEND THE TIME FOR FILING PETITIONS FOR RECONSIDERATION

Under the circumstances, even if this Motion is granted, GTE will have very limited time within which to evaluate the FCC Model. Accordingly, GTE respectfully requests that the date for filing petitions for reconsideration be extended to 20 days from the date on which the requested data and information is produced for public review.

V. CONCLUSION

For the foregoing reasons, GTE's Emergency Motion for Discovery of Data and Information to Permit Public Review should be granted, and the requested discovery should be immediately produced, but in no event later than seven calendar days. In addition, GTE requests that the time for seeking reconsideration be extended until 20 days after such data and information is produced.

Respectfully submitted,

GTE SERVICE CORPORATION and its affiliated
domestic telephone operating companies

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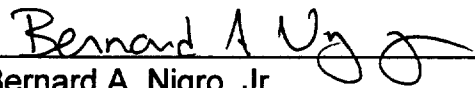
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November 30, 1998

CERTIFICATE OF SERVICE

I, Bernard A. Nigro, Jr., do hereby certify that on this 30th day of November, 1998, I have caused a copy of the foregoing Emergency Motion of GTE for Disclosure of Data and Information to Permit Public Review and Extension of Time to be served, via hand delivery upon the persons listed on the attached service list.


Bernard A. Nigro, Jr.

SERVICE LIST

The Honorable William E. Kennard,
Chairman
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Washington, DC 20554

The Honorable Michael K. Powell,
Commissioner
Federal Communications Commission
Room 844
1919 M Street, N.W.
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The Honorable Susan P. Ness,
Commissioner
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The Honorable Gloria Tristani,
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1231 20th Street, N.W.
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**Affidavit of Francis J. Murphy
on behalf of GTE Service Corporation**

FRANCIS J. MURPHY, being duly sworn, deposes and says:

1. I am the founder and president of Network Engineering Consultants, Inc. In this capacity, I have analyzed and evaluated telecommunications costing methodologies and models in universal service fund and unbundled network element proceedings. I have also authored expert reports and provided expert testimony on engineering and cost analysis of cost models filed in state and federal dockets.
2. During the past two years, I have analyzed extensively the various versions of the HAI Model (previously called the Hatfield Model), the Benchmark Cost Proxy Model ("BCPM") and, more recently, attempted to analyze the Hybrid Cost Proxy Model ("HCPM").
3. On November 18, 1998, the FCC's Fifth Report and Order ("Order") in CC Docket Nos. 96-45 and 97-160, FCC 98-279, was published in the Federal Register. In the Order, the FCC adopted a synthesized platform for the cost proxy model that will be used to estimate non-rural carriers' forward-looking cost to provide universal service. The synthesized platform purportedly contains the "best elements" of the three proxy models under consideration by the Commission.
4. In order to fully and completely analyze a cost model, one needs access to the database, algorithms and underlying methodologies. The FCC's cost model platform ("FCC Model") was released to the public without the data and documentation required to analyze the assumptions and algorithms contained in the Model. As a result, while it is possible to

conclude that the FCC Model is defective, it is impossible to determine how and why it fails to operate as described in the Order and is incapable of producing reasonable forward-looking costs for purposes of determining universal service fund support levels. For example, while keeping all other inputs constant, when we reduce the input for the "per-trunk equivalent investment in switch trunk port at each end of a trunk" from \$100 to \$1, which obviously should reduce the total central office switch investment, the switch investment output from the model actually increases.

5. A fundamental flaw of the FCC Model is that it does not contain any actual customer location data, which is required in order to run the Model and analyze its results. Throughout this docket, GTE has attempted to obtain the customer location data used or relied on by the cost model sponsors, and has not been successful to date. On July 27, 1998, the FCC issued a Protective Order that should have provided parties with the opportunity to review the raw geocoded data essential to the operation of the FCC Model (or the HAI Model).¹ This data was specifically cited in the FCC's Protective Order arrangement as data that was to be available to the parties via the Protective Order process. Despite the Protective Order, AT&T, MCI and PNR have all steadfastly refused to provide the raw geocoded data that would in theory enable GTE to operate and evaluate the FCC Model. To date, the FCC likewise has not made this information available to the interested public.

6. The FCC is anticipating that geocoded data will be available for use in the FCC Model, and has in fact deferred the selection of a database to the inputs phase of this

¹Protective Order, Before the Federal Communications Commission, CC Docket Nos. 96-45 and 97-160, July 27, 1998.

proceeding.² The geocoded data, as utilized by the FCC Model is in fact a preprocessing step and not a user-adjustable input value. This was an accepted fact in the discussions and litigation on how the HAI model used the geocoded data. There was no challenge to the fact that this data and the customer location module were a preprocessing part of the HAI platform. Customer location data files, geocoded or not, are probably the most essential element of any telecommunications network cost model. Once determined to be a viable and appropriate source, these files should not be considered or treated as user adjustable inputs. Without actual state and company customer location data that has been determined to be viable and appropriate, further analysis of any cost model may be inconclusive. The lack of access to either PNR's raw geocoded data, or any other source of geocoded input data, renders the FCC Model insusceptible to meaningful evaluation. Absent such data, it is impossible for the Commission or the parties to come to a reasonable conclusion as to the viability of the FCC Model.

7. In Appendix A of the Fifth Report and Order the FCC adopted the HAI geocoded customer dataset as "the current default data source for customer locations."³ This default data has not been made available. The only raw geocoded data to which the FCC has provided access is the fictional data for the state of Maryland. Needless to say, GTE is unable to perform a meaningful analysis using a cost model that contains only fictitious data for a territory in which it does not operate. For example, GTE wants to determine whether or not reasonable loop lengths are being produced by the FCC Model. GTE wants to

²Fifth Report and Order at Par. 34.

³Fifth Report and Order at Appendix A Par. 8

examine whether the Model is producing a reasonable distribution network as well as feeder network. These types of analyses, which are fundamental to any cost model evaluation, cannot be performed on the FCC Model until a viable customer location database consisting of actual company data is available to the parties.

8. The fictitious data contained in the Model cannot be used as input data to either the HAI or BCPM Model. Hence, GTE is unable to determine if the FCC Model is operating as described in the Order or producing accurate costs for GTE's territories. As a result, the FCC Model cannot be compared to any of the cost models from which it is derived.

9. The lack of model documentation is another roadblock that inhibits GTE in evaluating the FCC Model. It is unclear to the user exactly what assumptions and algorithms are contained in the FCC Model. Documentation has not been provided that fully explains the engineering assumptions and standards that are the basis for the FCC Model, thus making it impossible to determine if the network modeled complies with engineering design standards. Model developers have also failed to provide documentation with respect to how the different modules interface with each other, thereby making it impossible to determine if assumptions and algorithms are consistent from module to module.

10. It is clear from a review of the HAI Scenario Inputs Worksheet that HCPM input data is not passed to the HAI switch and expense modules. (In fact, the resulting FCC Model necessitates that the user has to create and manage two sets of input tables without a clear understanding of how these inputs effect the Model's results.) Indeed, from the limited analysis that we have been able to perform, it appears that the FCC Model is not consistent from module to module. For example, the investment for loop plant is reduced by sharing

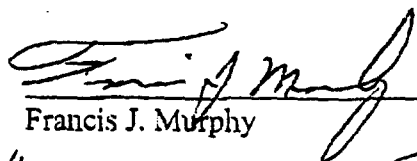
fractions once in the HCPM module and a second time in the expense module. These inconsistencies evidence significant defects in the FCC Model.

11. The lack of actual customer location data and the inability of the user to discern the underlying assumptions and engineering design criteria contained in the FCC Model render it unable to produce results that can be validated. In order to perform a meaningful validation, GTE must be provided customer location data for a significant portion of its serving area.
12. In addition, GTE must be provided the documentation necessary that allows it to determine if the engineering design criteria contained in the FCC Model are consistent with the design criteria that govern the construction of its network and therefore its costs. For example, when run with the default settings, the FCC Model does not appear to adhere to any known T1 on copper based architecture. Copper-based T1 transmission to a non-optical DLC site is an outdated technology. This design is no longer used by the majority of ILECs or the companies represented by the Rural Utilities Service when constructing new network facilities.
13. In the Fifth Report and Order, the FCC states that it believes that, "the federal platform is available for use by states, other interested policymakers, and the public."⁴ Unfortunately, this belief is not accurate. In reality, GTE cannot run the FCC Model in any one of the more than two dozen states in which it operates.
14. The lack of model documentation and the inability of the user to analyze model

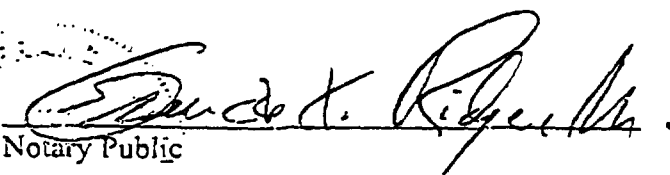
⁴Fifth Report and Order, Par. 92.

assumptions and algorithms make it difficult, if not impossible, to determine if the FCC Model complies with nine of the ten criteria set forth in the FCC's *Universal Service Order* and the directives set forth in the Fifth Report and Order. It is clear, even given the limited ability to evaluate the Model, that it does not comply with criterion number eight which dictates that "all underlying data should be verifiable, engineering assumptions reasonable, and outputs plausible."⁵

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 30, 1998.


Francis J. Murphy

Subscribed and sworn to before me on this 30th day of November, 1998 in Stoughton, Massachusetts.


Notary Public

Commonwealth of Massachusetts
Notary, S.S. Date 11-30-98
Then personally appeared the above named
Francis J. Murphy
and acknowledged the foregoing instrument to be his/her
free act and deed, before me,
Francis X. Ridge, Jr., Notary Public
My commission expires June 4, 2004

⁵FCC First Report and Order, May 8, 1997, Paragraph 250.